

AMENDED IN ASSEMBLY APRIL 4, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1091**

**Introduced by Assembly Member Parra**

February 22, 2005

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~~An act to amend Section 1812.101 of the Civil Code, relating to civil law.~~ *An act to add Chapter 31 (commencing with Section 22945) to Division 8 of the Business and Professions Code, relating to health care.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1091, as amended, Parra. Discount buying services.

*Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. Existing law also provides for the licensure and regulation of health insurers by the Department of Insurance.*

*This bill would provide for the registration and regulation of discount health care programs, as defined, by the Department of Managed Health Care. The bill would exempt those programs from the Knox-Keene Act and would require disclosure that they are not insurance. The bill would impose requirements on the operators of discount health care programs and on their marketers, as defined, and would authorize the department to revoke or suspend the program's registration and to assess a civil penalty for a violation of those requirements.*

~~Existing law defines a discount buying organization for purposes of provisions governing contracts for discount buying services. Any person who violates these provisions is guilty of a crime.~~

~~This bill would make a technical, nonsubstantive change to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 1812.101 of the Civil Code is amended~~  
2     ~~to read:~~

3     ~~SECTION 1. Chapter 31 (commencing with Section 22945) is~~  
4     ~~added to Division 8 of the Business and Professions Code, to~~  
5     ~~read:~~

6  
7             CHAPTER 31. DISCOUNT HEALTH CARE PROGRAMS

8  
9     22945. *The following definitions apply for purposes of this*  
10    *chapter:*

11    (a) *“Department” means the Department of Managed Health*  
12    *Care.*

13    (b) *“Discount health care program” means a program that is*  
14    *not insurance and that provides members access to health care*  
15    *services or related products at rates that are discounted from the*  
16    *amount charged by a health care provider who contracts with a*  
17    *health insurer or health care service plan.*

18    (c) *“Discount health care program operator” or “program*  
19    *operator” means an entity that operates a discount health care*  
20    *program by contracting with providers or networks of providers*  
21    *to create the complete group of discounted services and products*  
22    *available as part of a discount health care program.*

23    (d) *“Marketer” means a person or entity that sells or*  
24    *distributes a discount health care program, including a private*  
25    *label entity that places its name on and markets or distributes a*  
26    *discount health care program, but does not operate a discount*  
27    *health care program.*

28    (e) *“Member” means a person participating in a discount*  
29    *health care program.*

30    (f) *“Provider” means a person or entity that the discount*  
31    *health care program has contracted with to provide health care*  
32    *services or products directly to members.*

1 22945.1. *A program operator shall comply with the*  
2 *provisions of this chapter whether the discount health care*  
3 *program is operating in a freestanding capacity, including being*  
4 *marketed as a private label, or is marketed through, or in*  
5 *connection with, a health insurance policy, a health care service*  
6 *plan, or a life or disability insurer. A marketer shall comply with*  
7 *specified provisions of this chapter applicable to marketers.*

8 22945.2. (a) *A program operator shall enter into a written*  
9 *contract with a provider offering discounted health care services*  
10 *or products under the discount health care program containing*  
11 *all of the following provisions:*

12 (1) *A provision setting forth the services and products to be*  
13 *provided at a discount and the amount of the discount or,*  
14 *alternatively, a fee schedule that reflects the provider's*  
15 *discounted rates to be charged to a member.*

16 (2) *A provision prohibiting the provider from charging a*  
17 *member more than the discounted rate.*

18 (3) *A provision prohibiting the provider from preventing a*  
19 *member from participating in sales and other promotions offered*  
20 *by the provider to the general public that offer rates that are*  
21 *lower than the discounted rates set forth in the agreement with*  
22 *the program operator.*

23 (4) *A provision requiring the provider to maintain*  
24 *professional liability insurance of the type and in the amount that*  
25 *is in accordance with generally recognized industry standards.*

26 (5) *A provision requiring the provider to verify that any and*  
27 *all licenses required by local, state, or federal agencies, boards,*  
28 *associations, or committees have been obtained and are*  
29 *maintained in an active status during the time the provider offers*  
30 *discounted health care services or products under the discount*  
31 *health care program.*

32 (6) *A provision requiring the provider to promptly notify the*  
33 *program operator if the provider loses his or her legal authority*  
34 *to provide services or products, including, but not limited to,*  
35 *suspension or revocation of the provider's license.*

36 (b) *The program operator shall not charge or receive from a*  
37 *provider any fee or other compensation for entering into the*  
38 *agreement.*

39 (c) *The program operator shall maintain a copy of each*  
40 *agreement the program operator has with providers.*

1     (d) If the program operator contracts with a network of  
2 providers, as opposed to individual providers, the program  
3 operator shall obtain written assurance from the network that the  
4 network has a written agreement with its providers containing all  
5 of the terms described in subdivision (a) and that it is authorized  
6 to contract with the program operator on behalf of its providers.  
7 The program operator shall require the network to maintain and  
8 provide the program operator with a list of providers in the  
9 network and to revise the list to indicate whether a provider has  
10 been added to, or deleted from, the network. The program  
11 operator shall require the network to promptly remove a  
12 provider from its network if the provider loses his or her legal  
13 authority to provide services or products. The program operator  
14 shall maintain a copy of each written agreement the program  
15 operator has with a network.

16     22945.3. (a) A program operator shall prepare disclosure  
17 materials containing the following information:

18     (1) A general description of the services and products offered  
19 through the discount health care program, the types of providers  
20 available, and the range of discounts available.

21     (2) A toll-free telephone number and, if available, an Internet  
22 Web site address where a person may obtain information about  
23 the discount health care program and confirm or find a provider  
24 participating in that program.

25     (3) A clear and conspicuous statement that the discount health  
26 care program is not insurance, with the “not” capitalized, and  
27 that the member is required to pay the entire amount of the  
28 discounted rate.

29     (4) A statement that a member may rescind his or her  
30 membership within 30 calendar days of joining the discount  
31 health care program without providing a reason and shall be  
32 entitled to a complete refund of all membership fees paid to the  
33 discount health care program.

34     (5) A statement that the discount health care program does not  
35 guarantee the quality of the services or products offered by  
36 individual providers.

37     (6) A statement that a member may file a complaint under the  
38 discount health care program’s complaint resolution procedure  
39 regarding the availability of contracted discounts or services or  
40 other matters relating to the contractual obligations of the

1 *program to its members, and that for complaints regarding*  
2 *quality of services or products, the program operator shall*  
3 *inform the member, upon his or her request, of the name,*  
4 *telephone number, and address of the agency to which the*  
5 *member may direct the complaint.*

6 *(b) A marketer shall use disclosure materials that comply with*  
7 *subdivision (a).*

8 *22945.4. (a) A discount health care program's advertising,*  
9 *solicitation, and marketing materials and practices shall not*  
10 *contain or utilize deceptive, unfair, or misleading statements. A*  
11 *program operator shall approve all advertising of its program*  
12 *used by a marketer.*

13 *(b) A marketer's advertising, solicitation, and marketing*  
14 *materials and practices may not contain or utilize deceptive,*  
15 *unfair, or misleading statements. A marketer may only use*  
16 *advertising that has been approved by the program operator.*

17 *(c) Any advertisement of a discount health care program shall*  
18 *clearly and conspicuously state that the discount health care*  
19 *program is not insurance.*

20 *22945.5. A program operator shall comply with all of the*  
21 *following requirements:*

22 *(a) Provide a toll-free telephone number for members to*  
23 *obtain information about the discount health care program and*  
24 *confirm or find providers participating in the program.*

25 *(b) Remove a provider from the discount health care program*  
26 *within 30 days of learning that the provider has lost his or her*  
27 *legal authority to provide services or products, including, but not*  
28 *limited to, the suspension or revocation of the provider's license.*

29 *(c) Issue at least one membership card to serve as proof of*  
30 *membership in the discount health care program and at least one*  
31 *set of disclosure materials to each household in which one or*  
32 *more persons are members. The membership card shall contain*  
33 *a statement that the discount health care program is not*  
34 *insurance.*

35 *(d) Ensure that an application form or other membership*  
36 *agreement clearly and conspicuously discloses the duration of*  
37 *membership and the amount of payments the member is obligated*  
38 *to make for the membership. The application form and other*  
39 *membership agreements shall contain a statement that the*  
40 *discount health care program is not insurance.*

1     (e) (1) Allow any member to cancel his or her membership in  
2     the discount health care program within 30 calendar days of  
3     becoming a member without providing a reason, and refund all  
4     membership fees paid by that member to the program operator. A  
5     program operator shall pay refunds within 30 days of receiving a  
6     valid cancellation notice and returned membership card from the  
7     member.

8     (2) Notwithstanding paragraph (1), a program operator is not  
9     required to remit to a member an amount paid as a one-time  
10    enrollment fee or amount paid by the member to a provider for  
11    health care services or products he or she received.

12    (f) Maintain a surety bond in the principal amount, at  
13    minimum, of twenty thousand dollars (\$20,000).

14    (g) Maintain an agent for service of process in this state.

15    (h) Establish and operate a fair and efficient procedure for  
16    resolution of complaints regarding the availability of contracted  
17    discounts or services or other matters relating to the contractual  
18    obligations of the discount health care program to its members.  
19    The program operator is not required to consider routine  
20    member inquiries and information requests as complaints under  
21    the complaint resolution procedure. For a complaint about  
22    quality of services or products, the discount health care program  
23    shall provide the member, upon his or her request, the name,  
24    telephone number, and address of the agency to which the  
25    member may direct the complaint.

26    22945.6. On or before March 1, 2006, or prior to offering a  
27    discount health care program to consumers in this state,  
28    whichever occurs later, a program operator shall register with  
29    the department by filing a registration form indicating the  
30    program operator's name and address, its agent for service of  
31    process, and any other necessary and appropriate information  
32    required by the department. As part of that registration, and  
33    annually thereafter, the program operator shall certify to the  
34    department that its programs comply with the requirements of  
35    this chapter. A discount health care program operator shall pay  
36    the department an initial registration fee, not to exceed five  
37    hundred dollars (\$500), that the department shall deposit into the  
38    Managed Care Fund.

39    22945.7. (a) The department may adopt regulations to  
40    implement this chapter and may conduct a review to determine

1 compliance by program operators and marketers with this  
2 chapter and those regulations.

3 (b) If a program operator or marketer fails to comply with the  
4 requirements of this chapter or the regulations adopted pursuant  
5 to this chapter and does not correct the failure within 30 days  
6 following notification of the failure by the department, the  
7 department may suspend or revoke the registration of, or may  
8 assess civil penalties against, the program operator or marketer.

9 (c) The amount of any civil penalty assessed pursuant to  
10 subdivision (b) shall not exceed two thousand five hundred  
11 dollars (\$2,500) for each violation, which shall be assessed and  
12 recovered in a civil action brought in the name of the people of  
13 the State of California by the department. All civil penalties  
14 collected under this section shall be deposited into the Managed  
15 Care Fund.

16 (d) If the registration of a discount health care program  
17 operator is currently under suspension pursuant to the provisions  
18 of subdivision (b) or has been revoked pursuant to the provisions  
19 of subdivision (b) within the prior 12 months, the program  
20 operator may not apply to the department for registration.

21 22945.8. Notwithstanding any other provision of law, a  
22 discount health care program operator and a marketer lawfully  
23 may operate and market a discount health care program in this  
24 state if the program and marketing activity comply with the  
25 requirements of this chapter and any regulations adopted  
26 pursuant to this chapter. Part 1.9 (commencing with Section 445)  
27 of Division 1 of the Health and Safety Code, Chapter 2.2  
28 (commencing with Section 1340) of Division 2 of the Health and  
29 Safety Code, Title 2.6 (commencing with Section 1812.100) of  
30 Part 4 of Division 3 of the Civil Code, and Section 650 shall not  
31 apply to the discount health care program operations and  
32 marketing activities of a program operator or marketer.

33 22945.9. Nothing in this chapter shall be construed to make  
34 unlawful the operation of a discount health care program prior  
35 to the effective date of this chapter.

36 ~~1812.101. For the purpose of this title, the following~~  
37 ~~definitions shall be used:~~

38 ~~(a) "Discount buying organization" means any person or~~  
39 ~~persons, corporation, unincorporated association, or other~~  
40 ~~organization or entity which, for a consideration, provides or~~

~~purports to provide its clients or the clients or members of any other discount buying organization with the ability to purchase goods or services at discount prices, except that a discount buying organization does not include any of the following:~~

~~(1) Any discount buying organization in which the total consideration paid by each client or member in any manner whatsoever for the purchase of discount buying services from the organization that either:~~

~~(A) Does not exceed a one-time fee of fifty dollars (\$50) or an annual fee of twenty-five dollars (\$25) to be paid on a yearly basis.~~

~~(B) Does not exceed a one-time or annual fee of fifty dollars (\$50) and the organization provides a majority of the goods and services through purchases by members who walk in to a fixed location operated by the organization.~~

~~(2) Any discount buying organization in which the total consideration paid by each client or member in any manner whatsoever for the purchase of discount buying services from the organization does not exceed a one-time or annual fee of one hundred dollars (\$100) and the organization does all of the following in subparagraphs (A) to (F), inclusive, and subject to subparagraph (G):~~

~~(A) Offers buying services to clients or members through toll-free telephone access, computer access, or video shopping terminals.~~

~~(B) (i) During the first year of membership of each member, upon the request of the member, provides a full refund of membership fees, exclusive of any fees, however designated, not exceeding ten dollars (\$10) in the aggregate, without conditions other than the surrender or destruction of materials which allow the member to access or use the service.~~

~~(ii) (I) The organization shall establish an escrow account of fifty thousand dollars (\$50,000) for the purpose of providing refunds to members, pursuant to clause (i). If the fifty thousand dollars (\$50,000) deposited in escrow is depleted during the first year of the existence of the escrow account, the organization shall within three business days of depletion replenish the account in the amount of fifty thousand dollars (\$50,000). For each calendar year thereafter, the organization shall deposit in the account an amount equal to refunds made from the account in the~~



1 ~~prior calendar year, but not less than fifty thousand dollars~~  
2 ~~(\$50,000). At any time the balance in the escrow account~~  
3 ~~decreases to 50 percent of the amount funded that year, the~~  
4 ~~organization shall within three business days replenish the~~  
5 ~~account back to the balance required at the beginning of that~~  
6 ~~calendar year. The organization shall provide proof of the~~  
7 ~~establishment of the escrow account to the Secretary of State and~~  
8 ~~shall maintain records of all member requests for refunds and~~  
9 ~~refunds made pursuant to this clause. The records shall be made~~  
10 ~~available for review upon request by the Attorney General, any~~  
11 ~~district attorney, or the Department of Justice.~~

12 ~~(H) The escrow account shall be established and maintained at~~  
13 ~~a federally insured bank or federally insured financial institution~~  
14 ~~independent of the organization with escrow instructions making~~  
15 ~~the bank or financial institution or an officer or employee thereof~~  
16 ~~the escrow trustee.~~

17 ~~(HH) Refunds shall be made from the escrow account to any~~  
18 ~~member who provides proof of membership while a California~~  
19 ~~resident and requests, in writing, a membership refund, and has~~  
20 ~~not previously been refunded his or her membership fee. The~~  
21 ~~escrow trustee shall issue the refund within 10 days of the date~~  
22 ~~the written request is received by the escrow trustee. In addition,~~  
23 ~~requests for refunds may be made directly to and paid directly by~~  
24 ~~the organization.~~

25 ~~(IV) Proof of creation of the escrow account, and membership~~  
26 ~~refund information, shall be provided to the members in the~~  
27 ~~following form:~~

28 ~~“The \_\_\_\_\_ (organization) has established an escrow account~~  
29 ~~for the refund of membership fees at \_\_\_\_\_ (financial institution).~~  
30 ~~Refunds from the escrow account may, in addition to other~~  
31 ~~remedies and sources available to you, be obtained by mailing a~~  
32 ~~written request along with proof of membership to \_\_\_\_\_ (escrow~~  
33 ~~trustee). This refund request shall not affect or limit any other~~  
34 ~~remedy at law available to you.”~~

35 ~~(C) Provides at least 15 toll-free service lines to California~~  
36 ~~consumers devoted exclusively to customer service questions and~~  
37 ~~complaints.~~

38 ~~(D) Maintains a bond which meets the requirements of~~  
39 ~~Sections 1812.103 and 1812.104, except that the principal sum of~~  
40 ~~the bond need only be twenty thousand dollars (\$20,000).~~

~~(E) (i) Possesses an unrevoked acknowledgment from the Attorney General that the organization has provided to the Attorney General, to the Attorney General's reasonable satisfaction, marketing procedures and documents that clearly explain membership fee cancellation and refund terms which include:~~

~~(I) The amount of the initial membership fee and how and when it will be collected.~~

~~(II) If applicable, that a member must be advised, before any charges are applied, that they need not provide billing information in order to be charged a membership fee, in circumstances in which the telemarketing firm has prior access to the member's billing information.~~

~~(III) In the case of trial membership offers, the duration of the trial period and that if the member does not cancel within the trial period he or she will automatically be charged the membership fee.~~

~~(IV) Specifically how the member may cancel membership.~~

~~(V) The written disclosure, printed in capital letters with a minimum 14-point boldface type, indicating who to contact, both directly through the company and through the escrow account, for a refund.~~

~~(VI) The written disclosure made at the time of solicitation and at the time an enrollment package is sent to consumers.~~

~~(ii) When an organization provides documentation that clearly explains membership fee cancellation and refund terms to the Attorney General's reasonable satisfaction, which includes the information required by subclauses (I) to (VI), inclusive, of clause (i) of subparagraph (E), the Attorney General shall issue a revocable acknowledgment to the organization for it to obtain this exception. The acknowledgment issued by the Attorney General is not evidence of the adequacy or accuracy of the organization's actual disclosures and representations provided to consumers. No organization in any marketing to consumers may make any reference to an acknowledgment issued by the Attorney General under this clause.~~

~~(F) Provides the disclosures listed in subclauses (I) to (VI), inclusive, of clause (i) of subparagraph (E) to every prospective member.~~

1     ~~(G) The exemption is null and void if the organization fails to~~  
2     ~~comply with the conditions set forth in this section or if the~~  
3     ~~Attorney General's office revokes the exemption due to a~~  
4     ~~organization not being in full compliance with all of the~~  
5     ~~provisions of this section.~~

6     ~~(3) Any discount buying organization in which persons receive~~  
7     ~~discount buying services incidentally as part of a package of~~  
8     ~~services provided to or available to the individual on account of~~  
9     ~~his or her membership in the organization, which is not organized~~  
10    ~~for the profit of any person or organization, and which does not~~  
11    ~~have as one of its primary purposes or businesses, the provision~~  
12    ~~of discount buying services.~~

13    ~~(4) Any person, corporation, unincorporated association, or~~  
14    ~~other organization, which, for a consideration collected from~~  
15    ~~another entity, provides or purports to provide the clients of the~~  
16    ~~other entity with the ability to purchase goods or services at~~  
17    ~~discount prices, if the clients of the other entity do not order~~  
18    ~~from, or pay any money to, that person, corporation,~~  
19    ~~unincorporated association, or other organization; however, the~~  
20    ~~entity, from which the customer purchases the right to obtain~~  
21    ~~goods or services at discount prices, shall comply with the~~  
22    ~~requirements of this title.~~

23    ~~(b) "Contract for discount buying services" means a contract~~  
24    ~~between one party (hereinafter referred to as the "buyer") who is~~  
25    ~~purchasing the service for personal or family use, and a discount~~  
26    ~~buying organization, whereby the buyer for a consideration~~  
27    ~~receives the right to obtain goods or services from the discount~~  
28    ~~buying organization, or to utilize the discount buying~~  
29    ~~organization services in obtaining goods and services, at discount~~  
30    ~~prices.~~

31    ~~(c) "Discount prices" means prices which are represented to be~~  
32    ~~lower on most or all offered goods or services than those~~  
33    ~~generally charged for the items in the locality in which the~~  
34    ~~representation is made.~~

35    ~~This definition is not intended to affect the degree of savings~~  
36    ~~which must be offered on an item or selection of items in order to~~  
37    ~~truthfully and without misleading consumers represent an item,~~  
38    ~~selection of items, or entire store as being "discount" or~~  
39    ~~"discounted."~~

O